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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

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VERIZON CORPORATE SERVICES GROUP INC.
C/O CHRISTIAN R. ANDERSEN
600 HIDDEN RIDGE DRIVE
MAILCODE HQEO3H14
IRVING TX 75038

MAIL

APR 04 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Joseph Allen, et al.
Application No. 09/386,775
Filed: August 31, 1999
For: **TECHNIQUES FOR PROVIDING
UNINTERRUPTED DIGITAL COMMUNICATIONS
TO CUSTOMERS COUPLED TO LOCAL LOOP
GENERATION EQUIPMENT**

**DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT**

This is in response to the Petition to Withdraw the Holding of Abandonment filed December 9, 2004, which is treated as pursuant to 37 CFR §1.181. No fee is required.

The application was held as abandoned for failure to timely respond to the non-final Office action mailed February 6, 2004. A Notice of Abandonment was mailed on October 4, 2004.

Petitioner states that they did not receive the non-final Office action mailed January 15, 2004, but that the Notice of Abandonment was forwarded to them by the Law firm of Morgan Lewis & Bockius LLP of Washington D.C.

In the absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Petitioner has not complied with the requirements as set forth above to show that the Office action was in fact, not received.

A review of the application record reveals that two requests for Change of Address/Power of Attorney were filed in the subject application, within 2 months of each other. The first Change of Address/Power of Attorney lists the correspondence address set forth above and appoints the attorneys associated with customer number 32127, filed March 28, 2003. The second Change of Address/Power of Attorney was for the Law firm of Morgan Lewis & Bockius LLP of Washington D.C. This second Change of Address/Power of Attorney was filed April 11, 2003.


In a similar decision for a another application, but regarding the same attorneys and situation as listed above, the petition was granted due to the fact that the change of power of attorneys were filed less than a week apart and the second power of attorney was processed first. It was held in the other application decision that given the order of processing the change of power of attorney, that clearly there was an irregularity in the mailing of the Office action. In the instant application we have a similar situation, but no change in order of processing.

With respect to the instant petition, the Office will accept Petitioner's statement that the law firm of Morgan Lewis & Bockius LLP forwarded the Notice of Abandonment to the above noted firm as though there was an error in entry of power of attorneys. However, any future petition will be required to provide sufficient evidence to show who is the appropriate power of attorney.

Accordingly, there was an obvious irregularity in mailing of the final Office action and thus the application was not abandoned in fact. Therefore, the holding of abandonment is withdrawn.

The petition is **GRANTED**.

The application file is being forwarded to the Technology Center's technical support staff for re-mailing the final Office action. A new three month statutory period for response to the final Office action will be reset to begin as of the mailing date of the new final Office action.


Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications